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SHIP REGISTRATION AMENDMENT BILL

AS REPORTED FROM THE TRANSPORT AND ENVIRONMENT
COMMITTEE

COMMENTARY

Recommendation

We have examined the Ship Registration Amendment Bill and recommend that it be passed with the amendments shown in the bill.

Conduct of the examination

The Ship Registration Amendment Bill was referred to the Transport and Environment Committee on 27 November 1997. The closing date for submissions was 5 March 1998. The committee received and considered three submissions from three organisations and other interested groups and individuals. One submission was heard orally. Thirty-three minutes were spent on the hearing of evidence and consideration took one hour and thirty-four minutes.

Advice was received from the Ministry of Transport.

This commentary sets out the details of the committee's consideration of the bill and the major issues addressed by the committee.

Background to the bill

The bill makes minor technical amendments to the Ship Registration Act 1992 (the Act) and remedies practical difficulties arising from its administration. The Act provides a system for the registration of ships that are majority owned by New Zealand nationals. There is provision for the registration of ships belonging to New Zealand residents and for foreign ships operated by New Zealand based operators.

The Act provides for a New Zealand ship register comprising two parts. Part A provides legal evidence of a ship's ownership, including title and mortgage details, as well as providing evidence of a ship's New Zealand nationality. Registration under Part B provides evidence of nationality only, and is important to establish the New Zealand identity of vessels that travel overseas if they are not registered under Part A.

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The bill's amendments provide for the following alterations to the Act. Alterations are made to the ownership criteria of ships entitled to register under Part B of the Register and to evidential material required prior to registration under Part A of the Register. The term "surveyor" for the purpose of verifying alterations to ships registered on Part A is defined. The Registrar is given more discretion to exercise the power of removing ships from the Register that are lost, destroyed or no longer required or entitled to be registered.

The bill makes technical amendments to remedy practical difficulties identified in the course of administering the Act. We were advised by the Ministry of Transport that all of the changes are minor and none adversely affect owners or other persons with an interest in a ship.

The bill's provisions

The bill contains four principal amendments to the Act. All amendments are technical in nature. The amendments fall into two categories: those supported without qualification by submissioners and those supported with qualification.

Body corporate interests in ships now able to be registered

The principal Act permits Part B registration for vessels that are wholly owned by New Zealand citizens. The bill sought to enable New Zealand citizens (natural persons), who own a majority interest in a vessel, to register that vessel in Part B of the register. In effect this removes the unfairness of requiring part owners to register in the more expensive Part A register.

The nature of the amendment contained in clause 2 of the bill was queried by one submissioner. The definition of New Zealand citizens as natural persons precludes the registration, on Part B of the Register, of ships that are majority owned by a body corporate. This restriction does not apply to registration on Part A. The submissioner argued that the provision should be changed so the same ownership criteria apply to Parts A and B of the Register.

We recommend that clause 2 be revised to enable bodies corporate that own majority interests in vessels to register them on either Part A or Part B of the ship register. This revision of clause 2 required the consequent insertion of a new clause 3A, which outlines how a body corporate must state its address when registering its ownership interests in a vessel in Part B of the Register.

Alterations to evidential requirements for Part A

The documentation required for ship registration under Part A of the Register is altered by clause 3 of the bill. Previously those registering vessels under Part A were not required to produce change of ownership papers for the vessel since it was first registered. The bill makes the presentation of such certification mandatory. We recommend no change to this clause.

Definition of "surveyor"

Clause 4 amends section 30 of the principal Act, to provide that, for the purpose of this section, a "surveyor" must be recognised as such by the Director of Maritime Safety. The term "surveyor" is currently undefined in the Act as the previous definition was repealed by the Maritime Transport Act 1994. The new definition will assist in the verification of alterations to ships registered on Part A of the Register.

Registrar given power to remove ship from the Register

Where a ship has been destroyed or ceased to be a ship, but the owner has not applied to close the ship's registration, the Registrar is currently without power to

remove the ship from the Register. Clause 5 proposes to provide the Registrar with that power.

Matters not included in the bill as introduced

Section 45 Ship Registration Act

Section 45 of the Ship Registration Act outlines the circumstances in which the Registrar may amend the Register to reflect the discharge of a ship mortgage. Currently the Registrar is permitted to record the unconditional contractual discharge of a mortgage and receive money to evidence the discharge of mortgages.

It was submitted that section 45 required alteration in two respects. Firstly the Registrar should be given the power to amend the Register when a conditional discharge of a waiver has been made or the mortgage has been extinguished. The Act has been criticised by the Court of Appeal as failing to make express provision for the legal consequences for a ship mortgage.

Secondly, we were advised that the section should be amended to provide for the Registrar to alter the register where a mortgage has been discharged for consideration other than monetary consideration. At present the section provides for a discharge to be recorded if there is a monetary receipt in consideration for the discharge of a mortgage.

We recommend that the bill be amended to reflect these concerns.

Section 81 Ship Registration Act

Section 81 outlines the particulars the Registrar is entitled to require as evidence of transmissions of ships, shares in ships, and ship mortgages. The evidential requirements in section 81 relate to section 36, which covers transmissions of ships and shares in ships, and section 44, which deals with transmission of ships' mortgages.

It was submitted that section 81 lacks reference to mortgage transmissions despite being cross referenced with section 44 which expressly applies to mortgage transmissions. Neither does section 81 specify evidentiary criteria in respect of the transmissions of a ship as a result of its forfeiture.

We therefore recommend the bill amend section 81 of the Act in these two respects.

“New Zealand ship” and section 8(1)(b) Ship Registration Act

Section 8 (1) (b) of the Ship Registration Act entitles ships on demise charter to New Zealand based operators to be registered in New Zealand. The Maritime Transport Act 1994 defines the term “New Zealand ship” to include ships which, although not registered under the Ship Registration Act, are entitled to be so registered. A consequence of this is that a ship on demise charter to a New Zealand based operator is defined as a New Zealand ship and is therefore subject to New Zealand regulations despite being registered in another state. One submission argued that this creates unnecessary duplication of documents and inspection requirements, and suggested that section 8 (1) (b) of the principal Act be repealed.

We are aware that the definition of New Zealand ship in the Maritime Transport Act 1994 ensures New Zealand based operators using a demise chartered ship employing New Zealand nationals are subject to the same requirements as a New Zealand based operator using a New Zealand registered ship.

To repeal section 8 (1)(b) Ship Registration Act would have significant policy implications for the Maritime Transport Act and may be beyond the scope of this bill as introduced. It was the opinion of the former Transport Committee that considered the Maritime Transport Bill that New Zealand based operators using demise chartered ships should not be exempt from the safety, seafarer welfare and environmental requirements of New Zealand law merely because the ship is registered elsewhere.

Second ship register

The implementation of a second ship register was suggested by one submissioner. The purpose would be to enable those registered on it access to fiscal benefits.

We are not able to recommend that the bill be amended by providing for a second register as the bill as introduced contains small technical amendments to the principal Act; it is outside the scope of this bill to introduce measures designed to provide access to fiscal benefits to those on a particular register. This is for a number of reasons. Firstly, we believe the implementation of a second register is a decision with significant economic implications. These implications, and other practical and policy issues are yet to be considered by the Government. Secondly, the purpose of the Ship Registration Act 1992 is to identify ships, record owners' interests and provide an administrative system for a New Zealand ship register.

KEY TO SYMBOLS USED IN REPRINTED BILL

AS REPORTED FROM A SELECT COMMITTEE

Struck Out (Unanimous)

Subject to this Act,

Text struck out unanimously

New (Unanimous)

Subject to this Act,

Text inserted unanimously



Hon Maurice Williamson

SHIP REGISTRATION AMENDMENT

ANALYSIS

Title	
1. Short Title and commencement	4. Alterations to ships
2. New Zealand-owned ships	5. Closure of registration
3. Evidence required before registration	6. Discharge, waiver, or extinction of mortgage
3A. Entry of particulars in Part B of Register	7. Evidence relating to transmissions

A BILL INTITULED

An Act to amend the Ship Registration Act 1992

BE IT ENACTED by the Parliament of New Zealand as follows:

5 **1. Short Title and commencement**—(1) This Act may be cited as the Ship Registration Amendment Act 1997, and is part of the Ship Registration Act 1992* (“the principal Act”).

(2) This Act comes into force on the day after the date on which it receives the Royal assent.

Struck Out (Unanimous)

10 **2. New Zealand-owned ships**—Section 3 of the principal Act is amended by repealing subsection (3), and substituting the following subsection:

15 “(3) For the purposes of registration in Part B of the Register, a ship is deemed to be New Zealand-owned only if more than half of the shares in the ship are owned by 1 or more natural persons who are New Zealand nationals.”

*1992, No. 89

New (Unanimous)

2. New Zealand-owned ships—(1) Section 3 (1) of the principal Act is amended by omitting the expression “part A”, and substituting the expression “Part A or Part B”.

(2) Section 3 of the principal Act is amended by repealing subsection (3). 5

3. Evidence required before registration—Section 14 (1) (b) of the principal Act is amended by adding the words “, or (if it has not been registered in any country) have occurred since it was built”. 10

New (Unanimous)

3A. Entry of particulars in Part B of Register—Section 21 of the principal Act is amended by adding the following subsection:

“(6) For the purposes of subsection (1) (e), a body corporate must state its address as follows: 15

“(a) If the corporation has a registered office in New Zealand, it must state the address of that office:

“(b) If the corporation is not incorporated in New Zealand but has a principal place of business in New Zealand, it must state the address of that place: 20

“(c) If the corporation has neither a registered office nor a principal place of business in New Zealand, it must state the address of its principal place of business outside New Zealand.” 25

4. Alterations to ships—Section 30 of the principal Act is amended by adding the following subsection:

“(5) In this section, ‘surveyor’ means a surveyor of ships recognised by the Director.”

5. Closure of registration—Section 32 of the principal Act is amended by inserting, after subsection (3), the following subsection: 30

“(3A) If the Registrar is satisfied that subsection (1) applies to a ship but the owner has not notified the Registrar as required by that subsection,— 35

“(a) The Registrar may close the registration of the ship by making an appropriate entry in the Register; and

5 “(b) If the Registrar closes the registration of the ship under paragraph (a), the Registrar must notify the owner of the closure by sending a notification to the last known address of the registered owner; and

“(c) An entry made under paragraph (a) has the same effect as an entry made under subsection (2).”

New (Unanimous)

10 **6. Discharge, waiver, or extinction of mortgage**—The principal Act is amended by repealing section 45, and substituting the following section:

15 “45. (1) Where a mortgage is discharged, waived, or extinguished by operation of law (including forfeiture), the Registrar must make an entry in the Register, to the effect specified in subsection (2), as soon as practicable after—

20 “(a) The lodgment of the mortgage instrument endorsed with a receipt for the mortgage money duly signed and attested; or

“(b) The lodgment of the mortgage instrument endorsed with an appropriate waiver or discharge duly signed and attested; or

“(c) The receipt of an order of a court directing that the ship be forfeit or an office copy of the order; or

25 “(d) The receipt of such particulars as the Registrar may reasonably require for the purposes of this section.

“(2) The entry in the Register must be to the effect that the mortgage has been discharged, waived, or extinguished.

30 “(3) On an entry being made under this section, any interest of the mortgagee under the mortgage vests in the person in whom, having regard to any relevant statutory provisions or intervening acts and circumstances, it would have been vested if the mortgage had not been made.”

35 **7. Evidence relating to transmissions**—The principal Act is amended by repealing section 81, and substituting the following section:

40 “81. Where the Registrar requires any person to furnish evidence of a transmission of any ship or share in a ship, or of any mortgage of a ship or share in a ship, under either section 36 or section 44, it is sufficient compliance with such requirement,—

New (Unanimous)

“(a) In the case of the death of a joint owner or joint mortgagee, to furnish the Registrar with—

“(i) A certificate of the death or burial of the deceased, probate or letters of administration of the estate of the deceased, or an office copy of any such document; and 5

“(ii) A declaration made by a person well acquainted with the deceased, to the effect that the deceased is named in the Register as a joint owner or joint mortgagee: 10

“(b) In the case of the death of a sole owner, owner in common, or sole mortgagee, to furnish the Registrar with an instrument constituting any person as the legal personal representative or constituting persons as the legal personal representatives of the deceased, or an office copy of such document: 15

“(c) In the case of a transmission upon an order of a Court, to furnish the Registrar with the order or an office copy of the order: 20

“(d) In the case of a lien in respect of a ship, to furnish the Registrar with such particulars as the Registrar may reasonably require for the purposes of this section:

“(e) In the case of forfeiture of a ship, to furnish the Registrar with the order of a court directing that the ship be forfeit or an office copy of the order, or such particulars as the Registrar may reasonably require for the purposes of this section.” 25

